

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 254 OF 2007

IN

CRIMINAL APPEAL NO. 687 OF 2003

DILIPKUMAR JAVERCHAND GADIYA ..APPLICANT

V/S

VINOD @ JITU @ BILLU RAMDAS CHAVRIYA

& ANR. ..RESPONDENTS

SHRI R.D. SURYAWANSHI FOR APPLICANT.

SHRI Y.S. SHINDE - APP FOR STATE.

CORAM: V.M. KANADE, J.

DATE : 22ND OCTOBER, 2007.

P.C.

1. Heard learned counsel appearing on behalf of the Applicant and the learned APP for the State. The Applicant seeks return of the property, namely gold brick of about half kg worth Rs. 1,75,000/- and other items of the complainant Mahavir Ratanchand Kothari to the present Applicant in view of the Judgment and Order passed by the 7th Ad-hoc Additional Sessions Judge, Pune. It is submitted that inspite of the order being passed by the Sessions Court the concerned police station is not returning the muddemal though specific

directions were given in the operative order at clause 8 of the said order. It is further submitted that the Applicant is willing to give an indemnity bond that in the event of any person claiming the said gold brick he is willing to return the said gold brick of half kg. to the police.

2. The prosecution case in nut shell are that the accused were charged for the offence punishable under section 395 of the Indian Penal Code. It is alleged that dacoity was committed at Kesaria Jewellers, Kamshet, Taluka Maval, District Pune and gold, silver and cash amount, total worth Rs. 4,12,000/- were stolen away. During the course of the investigation gold ball and silver jewellery were recovered. As per the Judgement and Order dated 22-4-2003 in para 20, the learned Judge has observed that this gold brick has not been claimed either by P.W. 14 from whose custody it was seized or by the accused No. 7 at whose instance it was seized and in clause 8 of the operative part of the order the following observation is made.

"The seized gold brick of about 1/2 kg. worth Rs. 1,75,000/-, small plastic box etc. items of the complainant be returned to the

complainant's brother- in-law P.W. 2 Dilip

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Kumar Javerchand Gadiya residing at Kamshet,
the owner of the Kesaria Jewellers on due
identification."

3. The case of the Applicant is that though an application was made for return of the property pursuant to the direction given in the order the said property was not released on the ground that Accused No. 7 is absconding. It is likely that he may make claim in respect of the said gold and secondly that the Appeal was filed and pending in this court.

4. Learned APP has objected the Application on the ground that Appeal is pending and there is possibility that some other person making the claim in respect of same.

5. In my view there cannot be any impediment for implementing the order passed by the Ad-hoc Addl. Sessions Judge, Pune. Accordingly the seized gold brick of about half kg. worth Rs. 1,75,000/- and other items be released to the Applicant. The Applicant to give an Indemnity Bond to the Sessions Court that in the event any other person making claim in respect of the same, he shall return the said gold brick of half kg. which

shall have the same purity and value which shall be

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released to him. Application is accordingly allowed and
disposed of in the above terms.

(V.M. KANADE, J)